U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JUN 1 1 2015

FILE#:
PETITION RECEIPT#:

[redacted]

IN RE: Petitioner:
Beneficiary:

[redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision.** The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a church. It seeks to permanently employ the beneficiary in the United States as a pastor. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).[1] As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The priority date of the petition is November 28, 2012.[2] The director determined that the petitioner had not established that the beneficiary possessed the minimum educational requirements of the labor certification by the priority date. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.[3]

Beneficiary Qualifications

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.[4]

[1] Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

[2] The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

[3] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). On the Form I-290B, Notice of Appeal or Motion, the petitioner indicated that it would not be filing any additional evidence and/or a brief.

[4] We do not address whether the beneficiary possesses a U.S. or foreign equivalent baccalaureate degree followed by five (5) years of post-baccalaureate experience pursuant to 8 C.F.R. § 205.4(k)(2). In the instant case, the labor certification does not allow an applicant to qualify for the offered position with any alternate combination of education and

The petitioner must establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the beneficiary's qualifications, U.S. Citizenship and Immigration Services (USCIS) must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

Part H of the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Master's degree in divinity.
H.5. Training: None required.
H.6. Experience in the job offered: None required.
H.7. Alternate field of study: Yes. Theology or related.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: None.

Part J of the labor certification states that the beneficiary possesses a master's degree in divinity from the California, completed in 2008. The record contains a copy of the beneficiary's bachelor's graduation certificate and transcripts from Korea, reflecting that he earned a bachelor's in theology in 1999.[5] The record contains a copy of the beneficiary's master's graduation certificate and transcripts from Korea, reflecting that he earned a master's degree in youth

---

experience. Therefore, the beneficiary must possess a U.S. master's or foreign equivalent degree and 8 years of experience as stated by the terms of the labor certification.

[5] The certificate and transcript do not bear the respective university seals. In any future filings, the petitioner should address this issue.

education in 2005.[6] The record also contains a copy of the beneficiary's master of divinity graduation certificate and transcripts from California, completed in 2008.

The record contains an evaluation of the beneficiary's Korean educational credentials prepared by on May 23, 2014. The evaluation states that the beneficiary has earned the equivalent of a U.S. master's degree in youth leadership and development from a regionally accredited college or university in the United States.

The director found that the beneficiary's Master of Divinity was not issued by an accredited U.S. institution. While the regulatory language of 8 C.F.R. § 204.5(k)(2) does not specifically state that a degree must come from an accredited college or university to qualify as an "advanced degree," the requirement is implicit in the regulation. As stated by the U.S. Department of Education (USDE) on its website:

> The U.S. Department of Education does not accredit educational institutions and/or programs. However, the Secretary of Education is required by law to publish a list of nationally recognized accrediting agencies that the Secretary determines to be reliable authorities as to the quality of education or training provided by the institutions of higher education and the higher education programs they accredit. An agency seeking national recognition . . . must meet the Secretary's procedures and criteria for the recognition of accrediting agencies, as published in the *Federal Register* . . . . The Secretary . . . makes the final determination regarding recognition.
>
> The United States has no . . . centralized authority exercising . . . control over postsecondary educational institutions in this country. . . . [I]n general, institutions of higher education are permitted to operate with considerable independence and autonomy. As a consequence, American educational institutions can vary widely in the character and quality of their programs.
>
> . . . [T]he practice of accreditation arose in the United States as a means of conducting nongovernmental, peer evaluation of educational institutions and programs. Private educational associations of regional or national scope have adopted criteria reflecting the qualities of a sound educational program and have developed procedures for evaluating institutions or programs to determine whether or not they are operating at basic levels of quality.
>
> . . . Accreditation of an institution or program by a recognized accrediting agency provides a reasonable assurance of quality and acceptance by employers of diplomas and degrees.

[6] The certificate and transcript do not bear the respective university seals. In any future filings, the petitioner should address this issue.

www.ed.gov/print/admins/finaid/accred/accreditation.html (accessed March 18, 2015). The USDE's purpose in ascertaining the accreditation status of U.S. colleges and universities is to determine their eligibility for federal funding and student aid, and participation in other federal programs.

Outside the federal sphere, the Council for Higher Education Accreditation (CHEA), an association of 3,000 degree-granting colleges and universities, plays a similar oversight role. As stated on its website:

> Presidents of American universities and colleges established CHEA [in 1996] to strengthen higher education through strengthened accreditation of higher education institutions . . . .
>
> CHEA carries forward a long tradition that recognition of accrediting organizations should be a key strategy to assure quality, accountability, and improvement in higher education. Recognition by CHEA affirms that standards and processes of accrediting organizations are consistent with quality, improvement, and accountability expectations that CHEA has established. CHEA will recognize regional, specialized, national, and professional accrediting organizations.
>
> Accreditation, as distinct from recognition of accrediting organizations, focuses on higher education institutions. Accreditation aims to assure academic quality and accountability, and to encourage improvement. Accreditation is a voluntary, non-governmental peer review process by the higher education community . . . . The work of accrediting organizations involves hundreds of self-evaluations and site visits each year, attracts thousands of higher education volunteer professionals, and calls for substantial investment of institutional, accrediting organization, and volunteer time and effort.

www.chea.org/pdf/Recognition_Policy-June_28_2010-FINAL.pdf (accessed March 18, 2015).

The Act is a federal statute with nationwide application. The regulations implementing the Act, including 8 C.F.R. § 204.5(k)(2) defining "advanced degree" for the purposes of section 203(b)(2) of the Act, as well as 8 C.F.R. § 204.5(l)(2) defining "professional" for the purposes of section 203(b)(3) of the Act, also have nationwide application. As defined in 8 C.F.R. § 204.5(k)(2), an "advanced degree" includes "any **United States academic or professional degree** . . . above that of baccalaureate" (or a foreign equivalent degree), "[a] **United States baccalaureate degree**" (or a foreign equivalent degree) and five years of specialized experience (considered equivalent to a master's degree), and "a **United States doctorate**" (or a foreign equivalent degree). (Emphases added.). Similarly, "professional" is defined in 8 C.F.R. § 204.5(l)(2) as "a qualified alien who holds at least a **United States baccalaureate degree**" (or a foreign equivalent degree). (Emphasis added.). The repeated modifier "United States" to describe the different levels of (non-foreign) degrees makes clear the intention of the rule makers that the regulations apply to degrees issued by U.S. educational institutions that are recognized and honored on a nationwide basis. The only way to assure nationwide recognition for its degrees is for the educational institution to secure accreditation

by a regional accrediting agency approved by the USDE and CHEA. *See Yau v. INS*, 13 I&N Dec. 75 (Reg. Comm. 1968) (a degree issued by an unaccredited institution does not qualify as a professional within the statute granting preference classification.).

The record reflects that the beneficiary's Master of Divinity was issued in 2008 and that was not accredited by the Association for Biblical Higher Education (ABHE) until 2011.[7] *See* www.chea.org/search/actionInst.asp (accessed March 18, 2015). In his May 1, 2014 notice of intent to deny (NOID), the director cited to *Yau v. INS*, 13 I&N Dec. 75 (Reg. Comm. 1968) to find that a degree issued by an unaccredited institution does not qualify as a professional within the statute granting preference classification. On appeal, the petitioner contends that the instant case is distinguishable from *Yau* in that was subsequently accredited and graduates from have been able to transfer credits to other accredited schools. Further, the petitioner contends that the date on which an institution was granted accreditation is immaterial and the director discriminated against the beneficiary's degree because it was issued prior to the school's accreditation date. However, the petitioner's contentions are unpersuasive. The ABHE states that even if an institution is accredited it does not necessarily mean that another institution will accept another accredited institution's credits. *See* www.abhe.org/pages/accreditation/NAV-FAQ.html (accessed March 18, 2015). Therefore, whether credits are accepted by other institutions is not an indicator of whether the instant beneficiary's case is distinguishable from *Yau v. INS* thereby rendering the question of accreditation moot. Further, ABHE states that accreditation of an institution is not retroactive. Therefore, 2011 accreditation is not retroactive and the beneficiary's degree cannot be deemed to be one issued by an accredited institution.

The petitioner cites a decision we issued concerning accreditation of an institution post-degree issuance, but does not provide its published citation. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Further, the instant case is distinguishable. was accredited more than 2 years and 8 months after the instant beneficiary's degree was issued, whereas the degree discussed in our November 2012 decision was issued within one year of accreditation.[8]

In response to our February 4, 2015 Notice of Intent to Dismiss (NOID) the petitioner pointed out that is certified by the Department of Homeland Security (DHS) under the Student Exchange and Visitor Program (SEVP) to enroll foreign students. However, this status has no bearing on whether a degree issued by meets the requirements of section 203(b)(2) of the Act.

For the reasons explained above, the petitioner has failed to establish that the beneficiary possesses a master's degree in divinity, theology or a related field from an accredited U.S. institution. Nor does the beneficiary have a foreign educational equivalent to a master's degree in divinity, theology or a related field. In response to our NOID, the petitioner contends that the beneficiary's master's degree

[7] The Council for Higher Education Association (CHEA) and the U.S. Department of Education (USDE) identifies ABHE as a recognized U.S. accrediting organization. *See* www.chea.org/pdf/CHEA_USDE_AllAccred.pdf (accessed March 18, 2015).

[8] The degree was issued 8.5 months prior to date of accreditation.

in youth education from South Korea, meets the minimum educational requirements of the instant labor certification and cites a May 7, 2014 letter from professor, on letterhead. The letter states that the study of youth education at is closely related to pastoral and theological studies and teaches aspects of Christian ministry that are an important part of a pastor's job. While the letter states that most students are pastors, it also lists counsel and social workers, occupations in which theology/divinity is not a requirement. Graduate School of Education was "established in order to provide elementary, and middle school teachers with opportunities to improve their qualities and is popular among teachers and prospective teachers." *See* (accessed March 18, 2015). describes the youth education department's mission as:

> Learn theories and knowledge about youth activities and the study of youth education, and train capable young leaders who can contribute to the country and local communities.
>
> - Researching on youth activities and youth education
> - Training capable and faithful young leaders
> - Teaching politeness and sociability to juveniles
> - Developing new youth education programs to strengthen counsellings

See www.mju.ac.kr (accessed March 18, 2015).

In comparing the courses the beneficiary completed during his master of divinity program at and the courses he completed during his masters in youth education program at the curriculum completed during the beneficiary's master in youth education does not mention either theology, divinity, pastoral studies or any related field:

Master of Divinity	**Master in Youth Education**
	YEAR 1 SEMESTER 1
Exegesis of the Old Testament	Development & Administration of Program
Hymnology and Church Music	Youth Training
Personal Evangelism	Environmental Education
Introduction to New Testament	Management of Lifelong Education
Field Work	Methods of Distance Education
	Lifelong Education
	YEAR 1 SEMESTER 2
Church History I	Theory of Youth Environment
Church History II	Method in Youth Leadership
Homiletics	Industrial Education Programming
Old Testament Theology	Adult Learning and Counseling
Field Work	Volunteer
	Human Resources Development

YEAR 2 SEMESTER 1

Introduction to Old Testament	Youth Culture
Systematic Theology 2	Welfare in Youth
Church Leadership & Spirituality	Studies in Youth Psychology
Trends of Contemporary Theology	Methods in Non-Formal Education
Field Work	

YEAR 2 SEMESTER 2

Practice of Preaching	Regulations and Administration for Youth
Theology of Ministry	A Study of Youth Policy
Christian Education	Advanced Methods in Youth Leadership
Thesis	
Field Work	

YEAR 3 SEMESTER 1

Research and Writing	Social Education & Special Education
Life of Saint Paul	

YEAR 3 SEMESTER 2

Field Work
New Testament Theology
Theology of Pauline Epistle
Systematic Theology I

While it is true that youth ministry is an important part of a pastor's job, there are job duties beyond those associated with youth education. The petitioner has not established any direct correlation between a degree in youth education and a degree in theology/divinity. The evaluation of the beneficiary's Korean credentials submitted by the petitioner states that the degree is in youth education and not divinity, theology or a related field. As such, the beneficiary's master's degree does not meet the educational requirements of the labor certification, as it is not in the required field of divinity, theology or a related field.

The petitioner failed to establish that the beneficiary possessed the minimum requirements of the offered position set forth on the labor certification by the priority date. Accordingly, the petition must be denied for this reason.

Ability to Pay the Proffered Wage

Beyond the decision of the director,[9] the petitioner has failed to establish its ability to pay the proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

[9] We may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date. The proffered wage as stated on the ETA Form 9089 is $44,034.00 per year. The record indicates the petitioner is structured as a nonprofit corporation and filed its tax returns on Internal Revenue Service (IRS) Form 990, Return of Organization Exempt from Income Tax. On the petition, the petitioner claimed to have been established in and to currently employ 1 worker.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA Form 9089 labor certification application establishes a priority date for any immigrant petition later based on the ETA Form 9089, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, USCIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the record does not contain any IRS Forms W-2, Wage and Tax Statements or Form 1099-Misc, Miscellaneous Income, indicating that the petitioner paid the beneficiary any wages in 2012, 2013 or 2014.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income[10] figure reflected

[10] A nonprofit organization issues a statement of activities (income statement). The statement of activities reports revenues and expenses according to three classifications of net assets: unrestricted net assets, temporarily restricted net assets and permanently restricted net assets. The statement of activities explains how net assets changed from one date to another. Net assets generally increase when revenues are recorded and decrease when expenses are recorded. *See* FASB Accounting Standards Codification® Topic 958 at https://asc.fasb.org (accessed November 12, 2014). In a for-profit business, revenues minus expenses are called net income. In a nonprofit organization, the change in net assets is a surplus or deficit that is carried forward.

on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*citing Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, USCIS will review the petitioner's net current assets.[11] Net current assets are the difference between the petitioner's current assets and current liabilities.[12] If the total of a petitioner's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

The petitioner's IRS Forms 990 demonstrate its surplus as $4,426.00 in 2012, $3,938.00 in 2013 and $45,648.00 in 2014.[13] Therefore, for the year 2014 the petitioner had sufficient surplus to pay the proffered wage. The petitioner did not have sufficient surplus to pay the proffered wage in 2012 and 2013 and the petitioner failed to provide audited financial statements to establish its net current assets in 2012 and 2013. Therefore, for the years 2012 and 2013, the petitioner did not establish that it had sufficient surplus or net current assets to pay the proffered wage.

In response to our NOID, the petitioner asserts that net current assets are calculated by subtracting the current liabilities (line 17(b)-19(b)) from its current assets (lines 1(b)-6(b)). The petitioner provides no support for this formula. Without documentary evidence to support the claim, the assertions of the petitioner will not satisfy the petitioner's burden of proof. The assertions of the petitioner do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Part X of IRS Form 990 provides the organization's balance sheet. The organization's assets and liabilities are listed in order of their liquidity or maturity. However, Part X of IRS Form 990 does not indicate which assets and liabilities are current. In any future filings, the petitioner should submit its audited Statement of Financial Position (balance sheet) to establish its net current assets.

We acknowledge the letter from [redacted] CPA, submitted in response to the director's NOID.

[11] In a nonprofit organization, current assets minus current liabilities are also known as net working capital or net working deficit.

[12] According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

[13] IRS Form 990, Part I, line 19 (current year).

While Mr. provides an explanation for the calculation of net current assets, Mr. does not state that he has reviewed the petitioner's current assets or liabilities in any year, or audited the petitioner's balance sheets. In response to our NOID the petitioner contends that it need not provide its tax returns and audited financials. However, without audited financials we are unable to determine if the petitioner had sufficient net current assets to pay the proffered wage in any years in which it did not have sufficient surplus to pay the proffered wage.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612 (Reg'l Comm'r 1967). The petitioning entity in *Sonegawa* had been in business for over 11 years and routinely earned a gross annual income of about $100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, the petitioner's 2012, 2013 and 2014 tax returns indicate that it has not paid any salaries or wages despite claiming that it employs 1 individual. The petitioner's surplus in 2012 and 2013 was significantly less than the proffered wage. In addition, there is no evidence in the record of the historical growth of the petitioner, of the occurrence of any uncharacteristic expenditures or losses from which it has since recovered, or of the petitioner's reputation. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.